IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 233 of 2006

MANOHAR LAL
V/S
KHETA RAM & ORS.

Mr. RK SINGHAL, for the appellant / petitioner

Date of Order : 20.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the impugned judgments.

The two learned courts below have decreed the suit for eviction from the shop on the ground of reasonable and bonafide necessity of Prem being son of the plaintiff Jetha Ram.

It is contended by the learned counsel for the appellant that the initially property was purchased by three persons jointly being plaintiffs along with Lumba Ram. The appellant was inducted as tenant by Lumba Ram, and thereafter only to elbow out the appellant the sale deed was purportedly executed by Lumba Ram in favour of plaintiff, and thereafter the bonafide necessity of Prem has been simulated, which is totally bereft of bonafides,

and the appellant should not be ordered to be evicted.

I have considered the submissions, and find that the two learned courts below have appreciated the evidence, and have found the reasonable and bonafide necessity of the plaintiff's son Prem. Likewise, the question of comparative hardship has also been considered by the learned courts below and found against the appellant.

In my view, the findings are not vitiated on any of the grounds available under Section 100 C.P.C. The appeal thus does not involve any substantial question of law, and the same is, therefore, dismissed.

Learned counsel for the appellant then prays for being granted reasonable time to the appellant to vacate the premises. Learned counsel also submitted that in view of the fact that premises are commercial and the fact that though the reasonable and bonafide necessity has been accepted by the two learned courts below but then it is writ large that this excuse has been taken by the plaintiff just to kick out the appellant, the appellant should be granted sufficiently long time to vacate the premises. In my view, in the peculiar circumstances of the case, the appellant is granted two years time to vacate the premises on the condition that the defendant gives an undertaking

before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/